

REMARKS

This responds to the Office Action mailed on January 27, 2006.

Claims 1-11 and 13-94 are presently pending in this application. For this response there have been no claim amendments, and the status of each claim as they presently appear in prosecution are presented above.

Power of Attorney and Correspondence Address

A Revocation and Power of Attorney, appointing the attorneys associated with Customer No. 49845, was filed with the U.S. Patent Office on June 28, 2005. Applicant requests that all future correspondence for this application be directed to Applicant's attorneys as follows:

Schwegman, Lundberg, Woessner & Kluth, P.A.
P.O. Box 2938
Minneapolis, MN 55402
Telephone No. (612)373-6900
Customer No. 49845

§103 Rejection of the Claims

Claims 1-11, 13, 17, 37-50, 53-54 and 57-72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuerst (U.S. 6,189,029) in view of Falk et al. (U.S. Publication No. 2001/0037206) and further in view of Feedback Forum (eBay.com, November 10, 1999, via web.archive.org).

At the outset Applicant would like to object to the Examiner's conclusion that the prior submitted claim limitations are non-functional descriptive material that cannot be used for purposes of distinguishing over the references of record. Applicant also respectfully disagrees with the case law references and MPEP reference that the Examiner appears to have proffered in support of the conclusion.

First, the feedback comment is related to an indicator and the indicator is derived from an opinion about the purchasing transaction from the perspective of one of the parties. Thus, the type of feedback comment is constrained and defined by the limitation and it is structurally interrelated.

Moreover, the Applicant would like to direct the Examiner's attention to MPEP 2106 (IV)(B)(1)(b) entitled "Nonfunctional Descriptive Material." It states that "Office personnel should be prudent . . . [n]onfunctional descriptive material may be claimed in combination with other functional descriptive . . . material . . . to provide the necessary functional and structural interrelationships . . ." In fact, *In re Lowry* cautioned the Office that the Court was "weary of reiterating this point, clearly stated that printed matter may well constitute structural limitations upon which patentability can be predicated." *In re Gulack* actually reinforced the notion that "functional" interrelationship was more important and more controlling than the "structural;" and the Court actually held in both matters (*Lowry* included) for the patentee and *Gulack* dealt with printed material. In fact, in *Lowry* a data structure claim was found patentable if it is recognized by the courts that data structures are physical entities (within a computer environment) that provide increased efficiency in computer operation or novel operation or processing. They are not analogous to printed matter. Courts have not ignored these distinctions, although Applicant respectfully submits, the Patent Office has and continues to do on numerous occasions.

In short, the online feedback and corresponding indicator are limited to representations of opinions from users involved in an interrelated online purchasing transaction. Applicant respectfully disagrees with the Examiner's conclusion and interpretation of the MPEP and the case law with respect to this issue. Applicant also reserves the right to raise this issue on appeal and to add further arguments in support that this conclusion is misplaced and improper.

It appears that the Examiner has retained many but not all of the previous rejections in view of the Examiner's conclusion that the added limitations are nonfunctional descriptive material and has added a new reference and a new argument with respect to the eBay.com reference. The 101 rejections have been removed but the Applicant believes the Examiner improperly maintained them by not further distinguishing the Fuerst and Falk references and relying on a 103 rejection with reference to a nonfunctional description argument.

Accordingly, the arguments that distinguish Fuerst and Falk are incorporated by reference herein from Applicant's previous response and these in combination with the remarks above are believed sufficient to remove those references as viable arguments against patentability.

Therefore, the only remaining issue to address with respect to the independent claims is the newly cited references (eBay.com) and the added arguments with respect to that references added by the Examiner in this Final Office Action.

The reference cited by the Examiner does discuss feedback but what is missing is the “predefined feedback” limitation. This is not taught or suggested from the cited reference and is still missing from the Fuerst and Falk references.

More specifically, a “survey” is commonly understood and associated with questions designed to investigate a certain topic, this is not and would not be recognized by one of ordinary skill in the art as predefined feedback associated with an opinion of a party involved in an online transaction. The newly cited reference does discuss feedback, but not “predefined feedback.” Therefore, even assuming the proposed combination is proper, which Applicant does not admit that it is, the resulting combination still lacks any teaching of a “predefined feedback” limitation. Therefore, the rejections should be withdrawn and the claims in question allowed. Applicant respectfully request an indication of the same.

With respect to the propriety of combining the references, the Applicant respectfully asserts that one of ordinary skill in the art would not have had any motivation to combine the eBay.com reference with the Fuerst and Falk references. This is so, because the feedback discussed in the Fuerst and Falk references are dealing with responses to questions of a survey. This is very different and not in any way related to opinions expressed as predefined feedback selections for on online purchasing transaction. The Fuerst and Flak references are not related to reputation information for a purchasing transaction; they are related to automated survey processing. Thus, Applicant respectfully asserts that the proposed combination is improper because it does not appear to Applicant that the references are any way related and as such it is unreasonable to assume that one of ordinary skill in the art would have been motivated to even think of combining the eBay.com reference with these two references. Moreover, Applicant incorporates by reference the previous arguments about the manner in which the Examiner has proposed to combine Falk and Fuerst with one another.

Thus, not only does the proposed combination lack each and every limitation included in the independent claims but the proposed combination is also improper because it lacks any reasonable evidence of motivation to be combined in the manner proposed by the Examiner by

one of ordinary skill in the art. Furthermore, there exist a plethora of arguments that motivation would have existed to not combine it on the bases that the two areas of coverage in the Falk and Fuerst reference and the eBay.com reference are substantially different and associated with different problems altogether.

Claims 14-16, 18-36, 51-52, 55-56 and 73-94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuerst in view of Falk et al. and further in view of Feedback Forum as applied to claims 1, 50 and 53 above, and further in view of Bayer et al. (U.S. 6,311,190).

Applicant's remarks above with respect to Fuerst and Falk and the eBay.com reference are equally applicable here and are therefore incorporated by reference herein for the independent claims enumerated with this rejection.

The Bayer reference is again related to surveys and not online purchasing transactions. Accordingly, Bayer suffers from the same deficiencies that the Falk and Fuerst references failed. Specifically, Bayer does not teach a "predefined feedback" that is associated with an opinion of a participant in an online purchasing transaction. Applicant also incorporates by reference the prior remarks and arguments made by the Applicant with respect to the Bayer reference.

Thus, the rejections should be withdrawn and the claims allowed. Applicant respectfully request an indication of the same.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (513) 942-0224 to facilitate prosecution of this application.

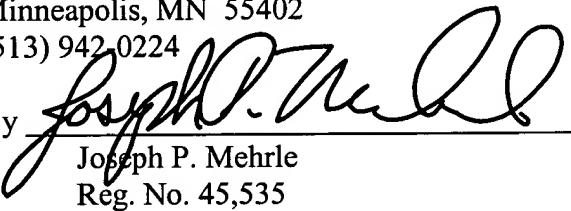
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

BARRY BOONE

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(513) 942-0224

By 
Joseph P. Mehrle
Reg. No. 45,535

Date 03/27/06

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27 day of March, 2006.

Name 

Signature 